Supreme Court, U.S.
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No. 09-99

IN THE

Supreme Court of the United States

STACY ANN PATTERSON,

Petitioner,

v.

AFSCME # 2456,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR REHEARING

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PETITION FOR REHEARING

The Petitioner, Stacy Ann Paterson, (hereinafter referred to as the "Petitioner", respectfully moves this Court for an order 1) vacating its denial of the Petition for Writ of Certiorari entered on October 5, 2009 and 2) granting the Petition. As grounds for this motion, the Petitioner restates the argument made in her Writ for Certiorari as well as provides the following additional argument to meet the criteria to grant a petition for rehearing.

ARGUMENT IN SUPPORT OF PETITION FOR REHEARING

Rule 44 of the Rules of the Supreme Court makes clear that rehearing from a denial of a petition for writ of certiorari shall only be granted in instances in which "intervening circumstances of a substantial or controlling effect" exist or to "other substantial grounds not previously presented." Rule 44.2, Rules of the Supreme Court. This Petition for Rehearing is being timely filed within the twenty-five day period of the order denying certiorari.

As previously stated, petitions for rehearing of an order denying certiorari are generally granted in two instances. In our facts, the Petitioner has met both grounds for rehearing.

A. The Petitioner has alleged intervening circumstances of a substantial or controlling effect.

The right to petition for rehearing of an order denying certiorari "is not to be deemed an empty formality as though such petitions will as a matter of course be denied. . . . Accordingly, on an appropriate showing that a substantial matter . . . is to be presented, appropriate opportunity should be given for

doing so." Flynn v. United States, 75 S. Ct. 285, 286 (1955) (Frankfurter, J., in chambers). Relying on this principle, the Court has not hesitated to postpone reconsideration of orders denying certiorari where deferral advances the interests of justice and judicial efficiency. See United States v. Ohio Power Co., 351 U.S. 980 (1956) ("continu[ing]" petition for rehearing until the following Term); see also United States v. Ohio Power Co., 353 U.S. 98, 99 (1957) (explaining deferral of rehearing petition on ground that "[w]e have consistently ruled that the interest in finality of litigation must yield where the interests of justice would make unfair the strict application of our rules"); Vail Mfg. Co. v. NLRB, 68 S. Ct. 32 (1947) (deferring consideration of petition for rehearing of order denying certiorari).

The crux of the Petitioner's claims involved issues of law regarding the burden of proof in an adverse employment action, discrimination, and a union failing to properly investigate and act in conformance with their obligations. The Third Circuit created a dangerous precedent against public policy dismissing the obligations of a union to protect employees in a hostile working environment. In the interest of justice, reconsideration must be granted and the Certiorari be addressed on the merits.

The Petitioner met her burden of proof that the Union violated Title VII and thus she is entitled to damages. A union must be held accountable when it fails to protect employees from Employer's known

discriminatory practices. Title VII of the 1964 Civil Rights Act prohibits "discrimination... because of...gender". Oncale v. Sundowner Offshore Services, 66 U.S.L.W. 4175 (U.S. March 5, 1998).

The Union failed to push for disciplines to be removed from the Petitioner's employee record. Instead, the Union just tried to downgrade the disciplines. The Union failed to properly represent the Petitioner during hearings, forced her to accept settlements that were unfavorable, pressured her to accept positions that she was not qualified for, and failed to follow procedures to represent a union-paid employee. Given the pattern of behavior of the Employer that was adopted by the Union by refuting the Employer's practices, the Union committed unlawful acts. Even after her unlawful termination, the Employer and Union have rejected the Petitioner's application for civil service employment and have refused to place her name on lists to apply for positions. If the Motion is denied, then the controlling effect on future cases of discriminatory practices and unlawful union practices would be frightening.

The Petitioner has alleged intervening circumstances of a substantial or controlling effect that is the necessary and fair process of union representation in discrimination cases. If an employee cannot seek relief from the union, then the administrative mandated process to resolve discrimination allegations is dissolved.

B. The Petitioner's Writ for Certiorari must be granted for or to "other substantial grounds not previously presented."

Due process requires investigation. In the initial stages of discrimination allegations, a public employee must first present his/her case to the union. In our facts, the Petitioner properly filed numerous and supported complaints against her employer with the Union. The Petitioner alleged and submitted over 300 pages of documentation evidencing discrimination due to her disability and gender. However, the Union failed to act and investigate with respect to the allegations. Given the pattern of behavior, the Union should have properly represented the Petitioner during hearings, not force her to accept settlements that were unfavorable, not pressure her to accept positions that she was not qualified for, and follow procedures to represent a union-paid employee. The Union decided without justification not to proceed in arbitration and make prejudicial decisions with the Petitioner's grievances. When the Union realized it had erred in handling the complaints and in retaliation of allegations that the Union was failing to investigate the discriminatory practices, it dismissed its paying member.

For speaking against her public employer and using her constitutional rights, the Petitioner was penalized. Citizens cannot be deprived of their fundamental rights simply because they work for the government. Connick v. Myers, 461 U.S. 138 (1983). Thus, a State cannot condition public employment on a basis that infringes upon the employee's constitutionally protected freedom of speech. Keyishian v. Board of Regents, 385 U.S. 589 (1967); Perry v. Sindermann, 408 U.S. 593 (1972). Whether an employee's speech is constitutionally protected is determined by a two-part test articulated by this Court in Pickering v. Board of Education, 391 U.S. 563 (1968). The Pickering test asks: (1) whether the speech addresses a matter of public concern, and (2) whether the interest of the employee as a citizen, in commenting on matters of public concern, outweighs the employer's interest in promoting the efficiency of the public services it performs. Pickering, 391 U.S. at 568. Thus, speech is unprotected only if its value -- as measured by the employee's and the public's interests -- is outweighed by the government's interest in effective and efficient provision of services. Watters v. City of Philadelphia, 55 F.3d 886, 895 (3d Cir. 1995).

The First Amendment protects discourse between members of the public on matters of public concern. Connick, 461 U.S. at 138. Speech involves a matter of public concern when it involves an issue of social, political, or other interest to a community. Id. at 146.

Furthermore, the place where the speech occurs is irrelevant. See Rankin v. McPherson, 483 U.S. 378, 388-392 (1987) (holding public employee's discharge violated First Amendment when based on comment by employee as private citizen on a matter of public concern made at work).

The Petitioner was a public employee and immediately brought her employer's discriminatory practices to the union's attention. Her speech regarding the inappropriate behavior of sexual harassment by her employer, improper training procedures, and non-existent disciplinary process caused her to be wrongfully terminated. Instead of investigating the discriminatory practices, the union subjected the Petitioner to unfair treatment. The entire administrative process which the Petitioner was surrendered to in fact failed. On the one hand the Petitioner was forced to be subjected to the union's procedures involving discrimination allegations and then on the other hand the Union by its own acts subjected the Petitioner to further discriminatory and retaliatory practices.

Two cardinal First Amendment principles animate both the Court's opinion in Tinker v. Des Moines Independent Community School Dist., 393 U.S. 503, 524, 89 S. Ct. 733, 21 L. Ed. 2d 731 (1969) and Justice Harlan's dissent. First, censorship based on the content of speech, particularly censorship that depends on the viewpoint of the speaker, is subject to the most rigorous burden of justification. "Discrimi-

nation against speech because of its message is presumed to be unconstitutional . . . . When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant. Viewpoint discrimination is thus an egregious form of content discrimination. The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction." Rosenberger v. Rector and Visitors of Univ. of Va., 515 U.S. 819, 828-829, 115 S. Ct. 2510, 132 L. Ed. 2d 700 (1995) .

Second, punishing someone for advocating illegal conduct is constitutional only when the advocacy is likely to provoke the harm that the government seeks to avoid. See Brandenburg v. Ohio, 395 U.S. 444, 449, 89 S. Ct. 1827, 23 L. Ed. 2d 430 (1969) (distinguishing "mere advocacy" of illegal conduct from "incitement to imminent lawless action"). Tinker v. Des Moines Independent Community School Dist., 393 U.S. 503, 524, 89 S. Ct. 733, 21 L. Ed. 2d 731 (1969); Morse v. Frederick, 127 S. Ct. 2618, 168 L. Ed. 2d 290 (2007).

The Petitioner had substantial evidence at the summary judgment stage to meet her burden of proof against the union for its discriminatory and unlawful practices. Because the Petitioner exercised her First Amendment rights, she was humiliated by the administrative process, she was denied the right

to present the evidence of the discriminatory to the employer, and she was denied a proper investigation – all in violation of her constitutional rights.

Furthermore, the Union knew of the Petitioner's allegations of discrimination, unlawful and disparity treatment, and disabilities and should have taken acts to protect her in the workforce and not subject her to unfavorable positions. 42 U.S.C. § 12131, et. seq.

The Act requires that the Petitioner show that she has an impairment that substantially limits at least one major life activity. See Doe v. County of Centre, PA, 242 F.3d 437, 447 (3d Cir.2001). See 29 C.F.R. § 1630.2(i) (giving examples of major life activities as "caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working"). Once again when the Petitioner brought facts before the union under her First Amendment rights, the Union should have reacted and properly investigated, and not encourage the employer's practices by simply denying her proper relief.

The Petitioner was forced to present her complaints to the Union. Her speech should have been protected and not used against her in creating undesirable working conditions.

U.S. Supreme Court's holding that a civil service employee must be given notice for specific cause and an opportunity to be responded prior to termination

Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985). A removal notice must be framed in a manner which enables the employee to discern the nature of the charges and to prepare adequately her defense. Chavis v. Philadelphia County Board of Assistance, 29 Pa. Commw. 205. 208, 209, 370 A.2d 445, 447 (1977).

The Petitioner's case must fall to the jury in order to preserve her substantive right of the opportunity to be heard due to the allegations of violation of discrimination by the Union. Mennonite Bd. of Missions v. Adams, 462 U.S. 791, 195, 103 S.Ct. 2706, 2709, 77 L.Ed.2d 180 (1982); Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865 (1950). Her claims have such significance— her lost of benefits, wages, status, reputation and professional well-being. In fact, as stated above, the Petitioner has received rejection letters from the civil service even though she qualified for numerous positions. The Union and Employer have intentionally refused to allow the Petitioner to be added to Civil Service lists since her wrongful discharge.

The fundamental requisite of due process is the opportunity to be heard. Applying the fundamental principles of due process, it is readily apparent that the courts misapplied the basic constitutional concept – the Petitioner was not given a reasonable opportunity to present her case from an arbitrary or unjust appropriation and defend her interest of her

reputation. The Petitioner's case was never properly investigated to meet even the minimum of due process. Moreover, her First Amendment rights were violated when the administrative agency failed to investigate and not punish the Petitioner for raising and speaking about the employer's discriminatory practices.

The Petitioner raised serious allegations against the Union, a union that represents over 45,000 members throughout the country. The Union must be held accountable and responsible to those it is suppose to serve.

CONCLUSION

For the reasons set forth above, as well as those contained in the petition for writ of certiorari, the Petitioner prays that this Honorable Court vacate the order of denial dated October 5, 2009 and grant the rehearing of the Writ of Certiorari.

Respectfully submitted,

Stacy Ann Patterson,
The Appellant
Pro Se

CERTIFICATE OF PETITIONER

The Petitioner certifies that this Petition for Rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2.

Respectfully submitted,

Stacy Ann Patterson

Stacy Ann Patterson
The Appellant
Pro Se